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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **AT TACOMA**

11 DISCOVERORG DATA, LLC,

12 Plaintiff,

13 v.

14 BENCHMARK CORP., and  
15 BENCHMARK VAR LLC,

16 Defendant.

Case No. 3:19-cv-05516

**COMPLAINT**

**JURY DEMAND**

17 Plaintiff DiscoverOrg Data, LLC (“DiscoverOrg”), for its complaint against  
18 Benchmark Corp. and Benchmark VAR LLC (collectively “Benchmark”), alleges as  
19 follows:

20 At its core, this case is very straightforward. DiscoverOrg is in the business of  
21 providing highly accurate information for business-to-business sales and marketing.  
22 DiscoverOrg invests millions of dollars annually to build and maintain this database, and  
23 DiscoverOrg’s customers pay tens and hundreds of thousands of dollars per year to  
24 access this information. Benchmark stole access to DiscoverOrg information (about  
25 29,000 records) and used them for its own sales and marketing, without paying  
26 DiscoverOrg any licensing fees. Of course, if everyone used DiscoverOrg’s data without

1 paying for it, DiscoverOrg would not exist, nor would the compilation of data that  
2 Benchmark stole. Benchmark has enjoyed a free ride, not just on DiscoverOrg, but on the  
3 approximately 4,000 DiscoverOrg clients who pay for the right to access and use this  
4 highly valuable information.

## 5 **PARTIES**

6 1. DiscoverOrg is a Delaware limited liability company with its principal place of  
7 business in Vancouver, Washington.

8 2. Benchmark Corp. is a Canadian corporation with a principal place of business  
9 in the Province of Ontario and does business in the State of Washington.

10 3. Benchmark VAR LLC is a Delaware limited liability company with its  
11 principal place of business in Delaware and does business in the State of Washington

## 12 **JURISDICTION AND VENUE**

13 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as the  
14 parties are completely diverse in citizenship and the amount in controversy exceeds  
15 \$75,000, and separately under 18 U.S.C. §§ 1331 and 1338(a) and (b) because  
16 DiscoverOrg asserts claims arising under Federal Law. This court also has supplemental  
17 jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.

18 5. This court has personal jurisdiction over Benchmark, and venue is properly  
19 laid in this district court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(a), in that  
20 Benchmark transacts business in this state and has committed tortious acts within this  
21 state. *See* RCW 4.28.185. Additionally, on information and belief, Benchmark advertises  
22 its products and services within the State of Washington, directs its products and services  
23 through the stream of commerce into the State of Washington, or otherwise has sufficient  
24 minimum contacts with the State of Washington so as to be subject to the personal  
25 jurisdiction of its courts.

## FACTS AND ALLEGATIONS

### A. DiscoverOrg's Database

6. DiscoverOrg is a provider of business-to-business (“b2b”) marketing data, which it delivers to clients via a password-secured, online graphical user interface. DiscoverOrg uses technology, computers, and electronic communication systems to provide subscribers with access to its database of marketing information profiling businesses in the United States and globally. DiscoverOrg has been recognized as an industry leader in sales and marketing intelligence. The depth, breadth, and accuracy of DiscoverOrg’s database is unrivaled in the marketplace.

7. DiscoverOrg has invested tens of millions of dollars to develop and maintain the infrastructure and content of its database and ensure that it is of the highest quality. DiscoverOrg employs approximately 200 research analysts focused on building, managing, and updating DiscoverOrg’s database, in order to deliver timely and comprehensive data being made available to DiscoverOrg’s clients. DiscoverOrg has expended substantial labor, time, resources, effort, and money to select, gather, collect, organize, generate, arrange, and disseminate the timely and continuously updated information DiscoverOrg provides in its database. In total DiscoverOrg employs more than 450 people and has made significant investment in developing and purchasing software, hardware, and other equipment to continuously update and support the accuracy and comprehensiveness of its database. DiscoverOrg’s database exhibits DiscoverOrg’s decisions and input as to the selection, arrangement, orchestration, compilation, and presentation of the organizational charts, contacts, and other information collected and assembled by DiscoverOrg’s analysts.

8. DiscoverOrg’s database is valuable to companies like Benchmark, who benefit from the use of detailed information in their efforts to market their own products and services. DiscoverOrg has licensed subscription access to its database to approximately

1 4,000 companies, who pay licensing fees for the right to access and use DiscoverOrg's  
2 database.

3 9. The value of DiscoverOrg's database is related to and dependent upon its  
4 proprietary and non-public nature. DiscoverOrg takes steps to protect the security of the  
5 information contained in its database. For example, DiscoverOrg limits access to its  
6 database to only authorized users pursuant to restrictive license agreements.  
7 DiscoverOrg's database is password-protected, and DiscoverOrg utilizes mail monitoring  
8 and list protection to further secure and ensure the integrity of DiscoverOrg's database.

9 **B. Benchmark's Wrongful Conduct**

10 10. Instead of acquiring a license from DiscoverOrg, Benchmark, without  
11 authorization from DiscoverOrg, obtained and used passwords and login credentials  
12 issued to other DiscoverOrg clients in order to access DiscoverOrg's proprietary  
13 information and used it to sell Benchmark products. If everyone did what Benchmark did,  
14 DiscoverOrg would not exist as a business, and the information misappropriated by  
15 Benchmark would not be available to anyone. Benchmark has sought to enjoy a free ride  
16 off of the license fees paid by DiscoverOrg's legitimate customers, whose payments allow  
17 DiscoverOrg to continue to provide this service and make the investments needed to  
18 maintain DiscoverOrg's database and related infrastructure. One IP address linked to  
19 Benchmark carried out the actions discussed below.

20 11. In April of 2019, Benchmark accessed DiscoverOrg's database via its online  
21 user interface, running searches and viewing the proprietary information displayed  
22 therein. During that period, Benchmark downloaded over 29,000 records from  
23 DiscoverOrg's database. The information wrongfully accessed was commercially  
24 exploited by Benchmark for its sales and marketing purposes, including conducting email  
25 marketing campaigns using the misappropriated information.  
26

12. Benchmark acted knowingly, intentionally, and willfully in accessing DiscoverOrg's computer and electronic communication system without authorization and in viewing and downloading DiscoverOrg's proprietary, copyrighted information. Benchmark circumvented DiscoverOrg's security system and unlawfully accessed DiscoverOrg's database to gain the commercial benefit thereof without compensating DiscoverOrg. Benchmark's unauthorized use of DiscoverOrg's proprietary information has furthered Benchmark's financial interest by facilitating, identifying, and contacting potential new customers and business opportunities, among other uses, and Benchmark has wrongfully profited therefrom.

13. Benchmark has further intentionally interfered with the contractual relationship between DiscoverOrg and one or more licensees of DiscoverOrg's data. Benchmark knew that DiscoverOrg's data was non-public and proprietary and subject to restrictive license agreements prohibiting transfer to third parties like Benchmark. Nevertheless, Benchmark knowingly encouraged authorized users of DiscoverOrg data to violate these license agreements by providing Benchmark with DiscoverOrg's proprietary data. Benchmark did so to gain the commercial benefit of DiscoverOrg's data without compensating DiscoverOrg. Benchmark has wrongfully profited from these activities and has harmed DiscoverOrg by diminishing the market value of DiscoverOrg's database.

14. At all relevant times, Benchmark had a duty to train and supervise the conduct of its employees and agents acting on its behalf. Benchmark was negligent in failing to train and monitor its employees and agents adequately and in failing to have appropriate policies in place regarding unauthorized access to computer systems, communication, storage networks, and copyrighted works and trade secrets and/or failing to enforce such policies.

15. All actions herein alleged to have been done by Benchmark were, upon information and belief, performed by employees or other agents of Benchmark within the

1 scope of their employment or other agency relationship with Benchmark, on Benchmark's  
2 behalf, and for Benchmark's benefit.

3 **FIRST CLAIM FOR RELIEF**

4 **(Theft of trade secrets - 18 U.S.C. § 1832 *et seq.*)**

5 16. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
6 through 15.

7 17. DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth,  
8 commercially-valuable information (including reporting structures, contact information,  
9 and other data) expending substantial time, labor, and expense. DiscoverOrg's database  
10 and the information contained therein comprise a compilation of business information.  
11 Information from DiscoverOrg's database is used in interstate commerce.

12 18. The compilation of information in DiscoverOrg's database derives  
13 independent economic value from not being generally known to, and not being readily  
14 ascertainable through proper means by, those who are not licensed by DiscoverOrg to  
15 access the database. Non-licensees can obtain economic value from the disclosure or use  
16 of the information in DiscoverOrg's database.

17 19. DiscoverOrg has taken reasonable measures to protect and keep the  
18 information in its database secret by limiting access to those customers who agree to the  
19 terms of the access in the licensing agreement and requiring password authentication to  
20 access the database through its secure online portal. DiscoverOrg also does its best to  
21 monitor access to the database and use of the information to further ensure its security.

22 20. Benchmark used improper means, including theft, unauthorized access to a  
23 protected computer, and inducement to breach a duty to maintain secrecy, to obtain  
24 access to and acquire information from DiscoverOrg's database. Benchmark knew or had  
25 reason to know at the time it obtained, and at the times it used, DiscoverOrg information  
26

1 that such information was obtained from persons owing DiscoverOrg a duty to maintain  
2 the secrecy thereof.

3 21. Benchmark attempted to and did knowingly and without authorization  
4 download, copy, and duplicate information from DiscoverOrg's proprietary database.  
5 Benchmark received and possessed information from DiscoverOrg's proprietary database  
6 that Benchmark knew to have been converted without authorization.

7 22. Benchmark willfully and maliciously misappropriated DiscoverOrg's trade  
8 secrets by obtaining login credentials that were not issued to Benchmark, accessing  
9 DiscoverOrg's computer systems without authorization, copying the information  
10 contained therein, and using that information for Benchmark's financial gain.

11 23. DiscoverOrg has been damaged by Benchmark's actions through the lost  
12 opportunity to realize licensing revenue and the diminution of the market value of its  
13 proprietary information. Benchmark has been unjustly enriched by the use of valuable  
14 marketing and sales information without paying compensation and through the  
15 consummation of business transactions that would not have occurred without use of the  
16 stolen information. DiscoverOrg would, in the alternative, be entitled to a reasonable  
17 royalty for Benchmark's use of the information.

18 24. By reason of the foregoing, Benchmark is liable to DiscoverOrg for damages  
19 and unjust enrichment or a reasonable royalty, in an amount to be proven at trial.  
20 DiscoverOrg is also entitled to exemplary damages and its reasonable attorney fees.  
21 Finally, DiscoverOrg is entitled to an injunction preventing Benchmark from continuing  
22 to possess or use information obtained from DiscoverOrg's database.

## 23 **SECOND CLAIM FOR RELIEF**

### 24 **(Misappropriation of trade secrets - RCW 19.108.010 *et seq.*)**

25 25. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
26 through 24.

26. By reason of the foregoing, Benchmark is liable to DiscoverOrg for damages and unjust enrichment or a reasonable royalty, in an amount to be proven at trial. DiscoverOrg is also entitled to exemplary damages and its reasonable attorney fees. Finally, DiscoverOrg is entitled to an injunction preventing Benchmark from continuing to possess or use information obtained from DiscoverOrg's database.

### THIRD CLAIM FOR RELIEF

**(Misappropriation)**

27. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 26.

28. DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth, commercially valuable information (including reporting structures, contact information, and other data) expending substantial time, labor, and expense.

29. Benchmark intentionally and without permission, accessed and copied information from DiscoverOrg’s database, used the stolen information for its own financial gain, and profited therefrom. Benchmark has taken a “free-ride” on DiscoverOrg’s skill, labor, and costly and substantial efforts in creating its commercially-valuable database.

30. Benchmark's actions have damaged DiscoverOrg in the form of lost profits and diminution of the market value of its database. By reason of the foregoing misappropriation of DiscoverOrg's data, Benchmark is liable to DiscoverOrg for compensatory damages including wrongfully derived revenues in an amount to be proven at trial.

#### FOURTH CLAIM FOR RELIEF

**(Copyright Infringement)**

31. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 30.



1        32. DiscoverOrg's database is an original work of authorship containing  
2 copyrightable subject matter for which copyright protection exists under the Copyright  
3 Act. DiscoverOrg has filed for copyright registration with the United States Copyright  
4 Office in compliance with 17 U.S.C. § 101 *et seq.* DiscoverOrg's copyright was registered  
5 December 27, 2010, with registration number TX0007487999.

6        33. As owner of all right, title, and interest in and to the copyrighted works,  
7 DiscoverOrg is entitled to all the exclusive rights and remedies accorded by Section 106 of  
8 the Copyright Act to a copyright owner, including the exclusive rights to reproduce the  
9 copyrighted works and to sell non-exclusive licenses to those copyrighted works.

10       34. Benchmark has gained access to, made, and used copies of DiscoverOrg's  
11 copyrighted material without authorization or license from DiscoverOrg. Benchmark used  
12 those copies for Benchmark's financial gain without compensating DiscoverOrg. In doing  
13 so, Benchmark has violated DiscoverOrg's exclusive rights of reproduction and  
14 distribution.

15       35. At all relevant times, Benchmark had the responsibility and the ability to  
16 supervise and monitor the actions its employees and agents, whose actions were  
17 performed on its behalf and for its direct financial benefit and were within the scope of  
18 their employment for Benchmark.

19       36. With knowledge of the infringing activity, Benchmark induced, caused,  
20 facilitated, encouraged, and/or or materially contributed to the infringing conduct.

21       37. Benchmark's acts of infringement have been willful and intentional, in  
22 disregard of and with indifference to the rights of DiscoverOrg.

23       38. As a direct and proximate results of the foregoing acts, DiscoverOrg has been  
24 and will continue to be harmed. DiscoverOrg is entitled to its actual damages, including  
25 any and all profits due to Benchmark's wrongful conduct, or statutory damages.

26 DiscoverOrg is also entitled to its costs, including reasonable attorney fees.

**FIFTH CLAIM FOR RELIEF**

**(Violation of the Vomputer Fraud and Abuse Act)**

39. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 38.

40. DiscoverOrg's computer system and database comprise "protected computers" within the meaning of 18 U.S.C. § 1030(e)(2).

41. Benchmark, knowingly and with intent to defraud DiscoverOrg, accessed DiscoverOrg's protected computers without authorization and thereby obtained valuable information from such protected computers using interstate communication.

42. Benchmark's actions constitute violations of 18 U.S.C. §§ 1030(a)(2)(C) and 1030(a)(4).

43. Benchmark's unauthorized access of DiscoverOrg's computer system has caused loss to DiscoverOrg of more than \$5,000 in value.

44. By reason of the foregoing, DiscoverOrg is entitled to compensatory damages in an amount to be determined at trial pursuant to 18 U.S.C. § 1030(g).

**SIXTH CLAIM FOR RELIEF**

**(Trespass to Chattels)**

45. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 44.

46. DiscoverOrg owns a computer system that houses its proprietary electronic database. DiscoverOrg grants password access to this system only to its clients.

47. Benchmark intentionally accessed DiscoverOrg's computer system without authorization and thereby interfered with DiscoverOrg's possessory interest in its computer systems.

48. As a result of Benchmark's trespass to DiscoverOrg's computer system, Benchmark caused damage to DiscoverOrg's database including, but not limited to, the

1 diminution in the market value of DiscoverOrg's computerized data and information  
2 stored on such computer system. By reason of the foregoing, Benchmark is liable to  
3 DiscoverOrg for compensatory damages in an amount to be proven at trial.

#### 4 **SEVENTH CLAIM FOR RELIEF**

##### 5 **(Unjust Enrichment)**

6 49. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
7 through 48.

8 50. Through Benchmark's wrongful actions described herein, Benchmark has  
9 been unjustly enriched through the use of DiscoverOrg's commercially valuable data  
10 without compensation to DiscoverOrg.

11 51. Benchmark is therefore liable to DiscoverOrg to the extent of such unjust  
12 enrichment in an amount to be determined at trial.

#### 13 **EIGHTH CLAIM FOR RELIEF**

##### 14 **(Intentional Interference with Contract)**

15 52. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
16 through 51.

17 53. Benchmark was aware that access to and use of DiscoverOrg's data was  
18 subject at all relevant times to restrictive license agreements between DiscoverOrg and its  
19 licensees prohibiting transfer to and use by third parties.

20 54. Benchmark knowingly and wrongfully encouraged one or more licensees of  
21 DiscoverOrg's proprietary data to transfer the same to Benchmark in violation of their  
22 license agreements.

23 55. Benchmark's sole purpose in encouraging this breach of contract was to  
24 benefit from the commercial value of DiscoverOrg's data without compensation to  
25 DiscoverOrg.  
26

1       56. Benchmark unjustly profited from this breach of contract, and harmed  
2 DiscoverOrg by causing a diminution of the commercial value of DiscoverOrg's data.

3       57. By reason of the foregoing, Benchmark is liable to DiscoverOrg for  
4 compensatory damages in an amount to be proven at trial.

### 5                               **NINTH CLAIM FOR RELIEF**

#### 6                               **(Negligence)**

7       58. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
8 through 57.

9       59. At all relevant times, Benchmark was under a duty to take reasonable care in  
10 training and supervising its employees and other agents acting on its behalf.

11       60. It was foreseeable that the failure to train and supervise employees and other  
12 agents regarding appropriate methods for obtaining sales and marketing information for  
13 the benefit of Benchmark would harm a third party such as DiscoverOrg.

14       61. Benchmark breached its duty when it failed to train and supervise its  
15 employees by allowing them in the unlawful conduct set forth in this complaint. In  
16 particular, Benchmark failed to properly implement and enforce a policy prohibiting such  
17 conduct, as would be required of a reasonable entity.

18       62. As a direct and proximate result of Benchmark's negligence, DiscoverOrg has  
19 suffered damage in the form of lost profits and diminution of the market value of its  
20 database. Benchmark is liable to DiscoverOrg for compensatory damages in an amount to  
21 be proven at trial.

### 22                               **PRAYER FOR RELIEF**

23       WHEREFORE, DiscoverOrg prays for the following relief:

- 24       1. Entry of judgment in its favor and against Benchmark on all counts;  
25       2. Entry of judgment in its favor against Benchmark on all of its Claims for Relief  
26 that Benchmark's unlawful conduct was willful and knowing;

1       3. As to its First Claim for Relief, its actual damages and unjust enrichment or a  
2 reasonably royalty, in an amount to be proven at trial, exemplary damages, and its  
3 reasonable attorney fees;

4       4. As to its Second Claim for Relief, its actual damages and unjust enrichment or  
5 a reasonably royalty, in an amount to be proven at trial, exemplary damages, and its  
6 reasonable attorney fees;

7       5. As to its Third Claim for Relief, compensatory damages in an amount to be  
8 proven at trial;

9       6. As to its Fourth Claim for Relief, actual damages in an amount to be proven at  
10 trial or statutory damages, plus costs including reasonable attorney fees;

11       7. As to its Fifth Claim for Relief, compensatory damages in an amount to be  
12 proven at trial;

13       8. As to its Sixth Claim for Relief, compensatory damages in an amount to be  
14 proven at trial;

15       9. As to its Seventh Claim for Relief, the amount to be proven at trial by which  
16 Benchmark has been unjustly enriched;

17       10. As to its Eighth Claim for Relief, compensatory damages in an amount to be  
18 proven at trial;

19       11. As to its Ninth Claim for Relief, compensatory damages in an amount to be  
20 proven at trial;

21       12. Exemplary damages for Benchmark's willful and knowing infringement, theft,  
22 and misappropriation;

23       13. Immediate and permanent injunctive relief enjoining Benchmark from using  
24 DiscoverOrg's trade secrets, copyrighted materials, and misappropriated products or  
25 services;  
26

1       14. An award of DiscoverOrg’s costs of suit, including the costs of experts and  
2 reasonable attorneys’ fees as permitted by law, for example pursuant to 18 U.S.C. § 1832  
3 *et seq.*, RCW 19.108 *et seq.*, and 17 U.S. Code § 505;

4       15. An award of pre- and post-judgment interest; and

5       16. Such other relief as the Court may deem just and equitable.

6  
7 Dated: June 7, 2019

Respectfully submitted,

8       NEWMAN DU WORS LLP

9       s/ John Du Wors

10       s/ Nathan Durrance

11       John Du Wors, WSBA No. 33987

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